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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Customer No.: 23641

Application No.: 10/630875

Confirmation

No.: 7941

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Attorney

Docket No.: 29595-82608

First Named

Inventor: Balthes, Garry E

Group Art

Unit: 1771

Examiner


Name: Jennifer A. Boyd

Title: LAMINATED COMPOSITION FOR A
HEADLINER AND OTHER
APPLICATIONS

Certificate Under 37 CFR 1.8(a)

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on August 28, 2006


Zellma Grunden

PETITION UNDER 37 C.F.R. § 1.81

Commissioner of Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madam:

The above-identified patent application is presently under appeal before the Board of
Patent Appeals and Inferences. The Applicant hereby respectfully petitions that the attached
Affidavits and sample of a headliner be considered by the Examiner and entered into the record.

The first Affidavit was previously filed on May 10, 2006, after a final rejection, but before the filing date of a Notice of Appeal. The second Affidavit is a new affidavit being filed for the first time concurrently with the Appellant's brief. In both cases Appellant can show that it has good and sufficient reasons why the Affidavits and other evidence is necessary and in the case of the first Affidavit was improperly denied entry, and in the case of the second Affidavit, it could not have been presented earlier.

With respect to the first Affidavit filed on May 10, 2006, the Examiner refused to enter the Affidavit because allegedly, "it is not commensurate in scope with the claims in Applicant's specification." Appellant respectfully asserts that this is incorrect. The Affidavit includes third-party documentary evidence identified as "Statement of Work Class 3 Recyclable Headliner." Every single claim at issue, including independent Claim 19, is directed to "a headliner for a vehicle." The evidence is commensurate in scope with the claims. With respect to the specification, it identifies a headliner "to be quite rigid under environmental testing conditions" and that the target deflection range for cantilever testing is "about 10 millimeters for a headliner application." On pages 28 and 29 of the "Statement of Work . . ." under "Benchmark Data" section, the cantilever test requires the headliner sag be "less than 10mm [millimeters]." The evidence is not only commensurate with the scope of the specification, but precisely supports the specification.

This evidence was not presented earlier because the May 10, 2006, Affidavit was in response to the Examiner's first citation of U.S. Patent No. 6,781,898 to Jarrard et al. ("Jarrard")

which is directed to a flexible convertible automobile roof top. Previously, the Examiner had identified the headliner, by virtue of the prior art, as being “stiff and rigid . . .” provide “good mechanical strength,” and create “a core with optimal stiffness and stability.” (*See* Paper 6/6/2005 at 5-7, and Paper 7/15/2005 at 3, 5-7.) There was no reason to evidence the regidity of the headliner in the past, because the Examiner had always interpreted the headliner as rigid.

With respect to the second Affidavit, it is being filed in response to the Examiner’s Advisory Action mailed on May 24, 2006, where the Examiner, for the very first time, interprets the limitation “headliner” as a “fabric covering the inside roof of an automobile” and, therefore, alleges “the convertible top of Jarrard’s falls within the scope of the definition of a headliner.” This definition appears absolutely no where in prosecution history until this paper. The Appellant did not present this evidence earlier because, again, the Examiner’s own position prior to this Advisory Action was that the headliner was rigid and stiff. This Affidavit simply attempts to rebutt the Examiner’s positions introduced in the Advisory Action.

The sample headliner attached to the Appendix of Evidence of the Appeal Brief demonstrates that headliners are rigid structures. Rigidity of the headliner was not an issue until the Examiner’s final office action.

It is respectfully believed that not being able to effectively rebutt the Examiner’s new allegations, made only after examination had closed, prejudices the Appellant and possibly deprives the Board of Appeals its ability to effectively adjudicate this appeal.

To the extent any fees are required in the filing of this petition, please charge the fees due in connection with the filing of this paper, including extension of time fees, to the Deposit Account of Barnes & Thornburg Account No. 02-1010 (29595/82608) and please credit any excess fees to such deposit account.

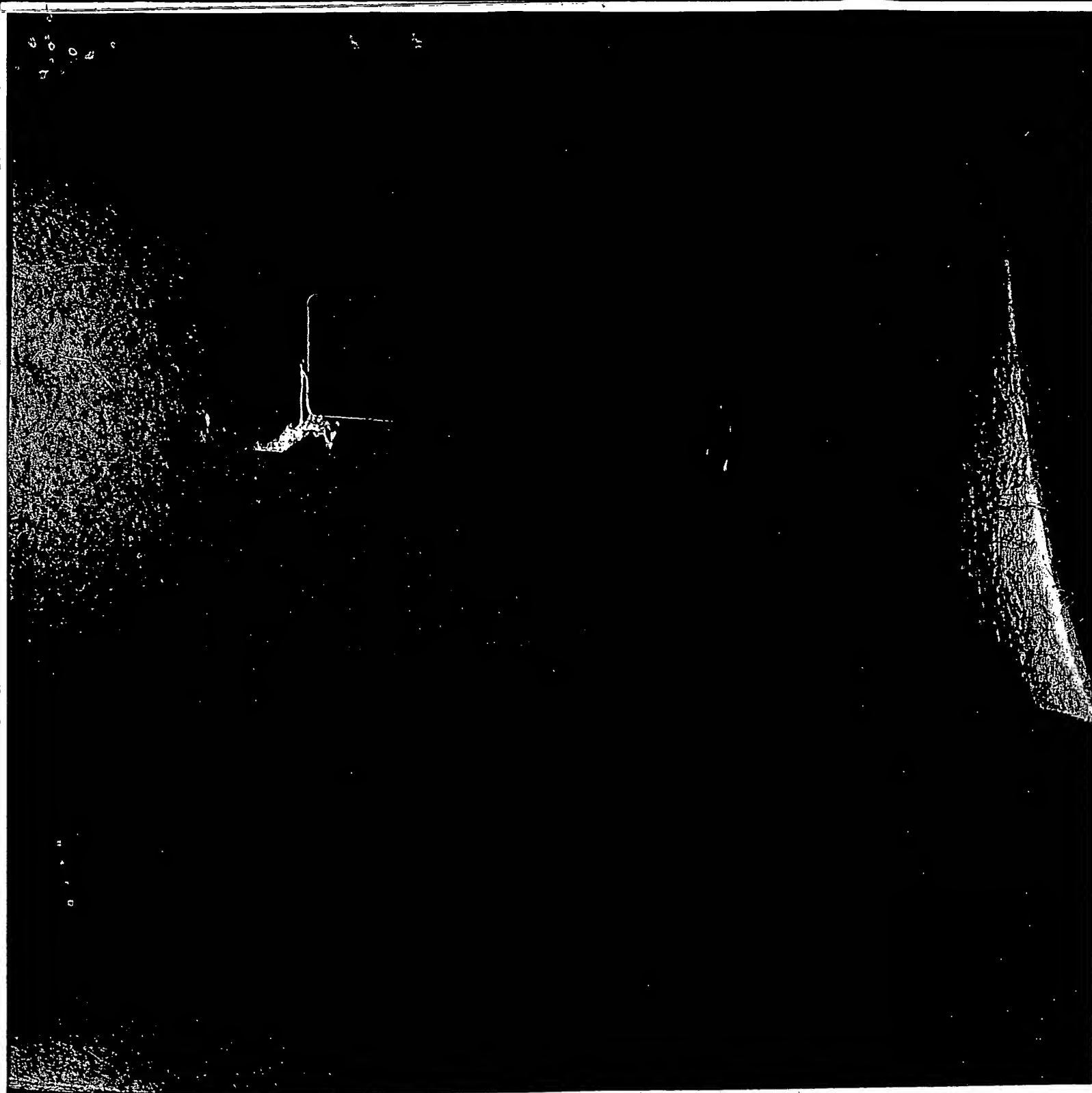
I hereby declare that all statements herein are of my own knowledge, or believed true, and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 101 of Title VIII of the U.S. Code, and that such willful false statements may jeopardize the validity of the application, any patents issuing thereon, or any patents to which this verified statement is directed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory S. Cooper', is written over a horizontal line.

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(Original headliner sample is under Tab C/)

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